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Attorneys for Defendant **HYDRA GROUP LLC**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

TODD C. BANK, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

-against-

HYDRA GROUP LLC,

Defendant.

Case No. CV-10-01770 JG-ALC

**HYDRA GROUP LLC NOTICE OF
MOTION AND MOTION TO
DISMISS, MOTION FOR MORE
DEFINITE DATEMENT, AND
MOTION TO STRIKE PURSUANT
TO FED. R. CIV. P. 12(B)(2),
12(B)(6), 12(E) AND 12(F)**

DATE: AUGUST 6, 2010
TIME: 12:00 P.M.
CTRM: 6C

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on August 6, 2010 at 12:00PM or as soon thereafter as the matter may be heard in the above-titled Court, located in Courtroom 6C of the United States District Court for the Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, NY 11201, defendant, Hydra Group LLC ("Hydra"), will move for dismissal pursuant to FED. R. CIV. P. 12(b)(2) and 12(b)(6), for a more definite statement pursuant to FED. R. CIV. P. 12(e) & 9(b), and to strike the plaintiff Todd C. Bank ("Plaintiff" or "Bank")'s Class-Action Complaint ("CAC") pursuant to FED. R. CIV. P. 12(f). The scheduling of this Motion is based on the Honorable Judge Gleeson's June 14, 2010 Order (copy attached hereto as Exhibit A).

The Court should dismiss the CAC because: (a) Plaintiff's claims are preempted
CaseNo. CV-10-1770-JG-ALC

1 by CAN-SPAM and (b) Plaintiff has failed to plead the elements of his claims with
2 particularity under FED. R. CIV. P. 9(b). In the alternative, the Court should require
3 Plaintiff to provide a more definite statement of his claims, because the FAC is
4 unintelligible. Finally, the Court should strike that portion of the CAC alleging "class
5 action" because the allegations are impertinent, scandalous and immaterial.

6 This Motion is made following defendant submitting a letter pursuant to this
7 Court's practice rule Local Rule 2.A.i. (copy attached hereto as Exhibit B). On June 23,
8 2010, counsel for Bank and counsel for Hydra had a telephonic meet-and-confer
9 regarding the Court's June 14, 2010 Order.

10 This Motion is based on Hydra's Memorandum of Points and Authorities and
11 such further evidence and arguments that may be presented prior to or at the hearing
12 on this Motion.

13
14 Respectfully Submitted,

15 DATED: June 28, 2010

MORRIS & FOX, PC

17 By: /s/ Stephen L. Fox

18 Stephen L. Fox
19 Attorney for Defendant
20 Hydra Group LLC
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